IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs October 27, 2009

STATE OF TENNESSEE v. DARRELL SHELTON

Appeal from the Circuit Court for Cocke County
No. 0905 Jon Kerry Blackwood, Judge

No. E2009-00238-CCA-R3-CD - Filed January 4, 2010

The Defendant, Darrell Shelton, pled guilty to driving under the influence, a Class A misdemeanor, after the trial court denied his motion to suppress. The Defendant's plea agreement called for reservation of a certified question of law regarding the legality of the police encounter which preceded his arrest. Because the judgment failed to note the reservation of a certified question, the appeal is dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and JOHN EVERETT WILLIAMS, JJ., joined.

Charlotte Ann Leibrock, Newport, Tennessee, for the appellant, Darrell Shelton.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel E. Willis, Assistant Attorney General; James B. Dunn, District Attorney General; and William Brownlow Marsh, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The Defendant was arrested for driving under the influence on November 14, 2007. He declined consent for a blood or breath alcohol test. After he was indicted, he filed a pretrial motion to suppress alleging that the law enforcement officer who stopped him lacked reasonable suspicion or probable cause to do so and violated his rights under the Fourth Amendment to the United States Constitution and article 1, section 7 of the Tennessee Constitution. The trial court conducted a hearing and denied the motion.

The Defendant then pled guilty. The transcript of the guilty plea hearing is not in the record, but the written plea agreement notes the Defendant and the State agreed for the Defendant to appeal the denial of the motion to suppress. The judgment was filed on January 5, 2009, and it failed to reflect reservation of a certified question of law. On February 6, 2009, the Defendant filed a notice

of appeal. On March 9, 2009, the trial court filed an order setting forth that the plea was subject to the following dispositive, certified question of law:

> Based on the testimony of the arresting officer, did the State establish the officer's reasonable suspicion that a crime was about to be committed to justify the stop based on the information from the dispatch officer after seeing the vehicle stopped on a county road less than two car widths wide[.]

This order states that the case was heard on January 5, 2009, and also states, "It is so Ordered this the 5th day of January, 2009." However, as noted above, the order was not filed until March 9, 2009, and the judgment contains no reference to this document or the certified question.

On appeal, the Defendant has raised the certified question. The State responds that the appeal should be dismissed because no certified question was properly reserved. The Defendant has not replied to the State's argument. We agree with the State.

The Tennessee Rules of Criminal Procedure provide:

> (b) When an Appeal Lies – The defendant or the state may appeal any order of judgment in a criminal proceeding when the law provides for such appeal. The defendant may appeal from any judgment of conviction:
>
> . . .
>
> (2) on a plea of guilty or nolo contendere, if:
>
> . . .
>
> (A) the defendant entered into a plea agreement under Rule 11(a)(3) but explicitly reserved–with the consent of the state and of the court–the right to appeal a certified question of law that is dispositive of the case, and the following requirements are met:
>
> > (I) the judgment of conviction or other document to which the judgment refers that is filed before the notice of appeal, contains a statement of the certified question of law that the defendant reserved for appellate review;
> >
> > (ii) the question of law is stated in the judgment or document so as to identify clearly the scope or limits of the legal issue reserved;

> (iii) the judgment or document reflects that the certified question was expressly reserved with the consent of the state and the trial court; and
>
> (iv) the judgment or document reflects that the defendant, the state, and the trial court are of the opinion that the certified question is dispositive of the case[.]

Tenn. R. Crim. P. 37(b)(2)(A)(I)-(iv).

In State v. Preston, 759 S.W.2d 647, 650 (Tenn. 1988), our supreme court succinctly specified the requirements for reserving a certified question of law in order to invoke appellate jurisdiction:

> Regardless of what has appeared in prior petitions, orders, colloquy in open court or otherwise, the final order or judgment from which the time begins to run to pursue a T.R.A.P. 3 appeal must contain a statement of the dispositive certified question of law reserved by defendant for appellate review and the question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved.

Our supreme court has shown that strict adherence to the Preston requirements is expected. See State v. Pendergrass, 937 S.W.2d 834, 836-37 (Tenn. 1996). Our supreme court has allowed entry of a corrective nunc pro tunc order when a certified question was omitted from the judgment. The order, however, must be filed while the trial court still has jurisdiction and before the notice of appeal is filed. State v. Armstrong, 126 S.W.3d 908 (Tenn. 2003). When the notice of appeal has been filed though, jurisdiction is vested in the Court of Criminal Appeals, and the trial court has no jurisdiction to amend its judgment. Pendergrass, 937 S.W.2d at 837.

In the present case, we first note that the Defendant filed an untimely notice of appeal on February 6, 2009. The trial court did not file its order attempting to cure the omission of the certified question until March 9, 2009. In addition, the judgment of the trial court became final thirty days after its entry on January 5, 2009, and the March 9 order was past this time period. See T.R.A.P. 4(a), (c); State v. Moore, 814 S.W.2d 381, 382 (Tenn. Crim. App. 1991). The trial court was without jurisdiction for either of these two reasons, and the March 9 order is of no effect. We conclude that the Defendant's issue is not properly before this court, and the appeal must be dismissed.

In consideration of the foregoing and the record as a whole, the appeal is dismissed.

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JOSEPH M. TIPTON, PRESIDING JUDGE